



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

December 4, 2000

**VIA HAND DELIVERY**

Chairman Richard L. Mathias  
Illinois Commerce Commission  
160 N. LaSalle Street, C-800  
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Commissioner Ruth K. Kretschmer  
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Commissioner Mary Frances Squires  
Illinois Commerce Commission  
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RE: Illinois Commerce Commission Docket No. 00-0361  
Letter of Commonwealth Edison to Commission, dated November 29, 2000

Dear Commissioners:

Last Thursday the Attorney General's office received a copy of a letter from Commonwealth Edison addressed to the Commission, in which ComEd indicated that it was in agreement with the Commission's suggestion, made at its November 20<sup>th</sup> pre-bench meeting, that ComEd "donate" certain nuclear plant station sites to the State of Illinois as a condition to Commission approval of the company's decommissioning petition in Docket No. 00-0361. The Citizens Utility Board sent a response to that letter to the Commission on November 30<sup>th</sup>, objecting to the Commission's consideration of such a proposal, at least outside of the evidentiary record.

ILLINOIS  
COMMERCE COMMISSION  
DEC 5 9 50 AM '00  
CHIEF CLERK'S OFFICE

We harbor serious reservations regarding the *ex parte* nature of the land donation issue outlined in ComEd's letter. As the Commission is well aware, pursuant to Section 10-103 of the Illinois Public Utilities Act, any of its findings with respect to ComEd's petition must be made "...exclusively on the record for decision in the case." 220 ILCS 5/10-103. Neither Illinois law nor the Commission's own rules permit extra-record proposals, even if based upon Commission deliberations at an open meeting, to be the basis for any findings of fact contained in final orders of the Commission. 220 ILCS 5/10-101; 5 ILCS 100/10-35(a)(8); 83 Ill. AdmCode 200.700(a)(10). Moreover, the Act provides that the Commission, having heard evidence on issues formally before it, "...shall make and render findings *concerning the subject matter and facts inquired into and enter its order based thereon.*" At no time was the land donation proposal ever an issue in this docket.

More important, we are compelled to alert the Commission to the fact that this proposal, even if it were not the subject of an *ex parte* communication, raises significant jurisdictional questions. The donation of real property to the state for use as parkland is not within the Commission's jurisdiction. Rather, such a transaction may implicate the authority of the Illinois Department of Natural Resources and in this particular case, the Illinois Department of Nuclear Safety, agencies which would be the likely transferees in such a transaction. The Commission's approval of the transfer of these sites without the participation of necessary parties such as the DNR and the DNS and, indeed, the municipalities involved, would be unprecedented, considering these agencies' overriding interests in land formerly utilized as nuclear plant sites.

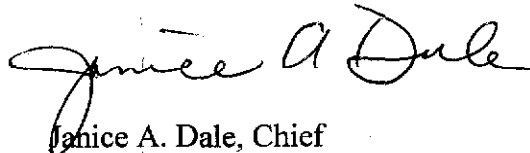
If, in light of the above jurisdictional issues, the Commission still decides to consider this "proposal," it may do so only subsequent to a reopening of the record according to its own rules of practice. 83 Ill. AdmCode 200.870. The record in this proceeding has been marked "heard and taken" and all briefs have been filed. Any party seeking additional hearings must therefore file an application stating its reasons therefore, "...including material changes of fact or of law and...a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced." 83 Ill. Adm Code 200.870. Should the Commission conclude that a legal basis for reopening the record exists (and we maintain that neither the facts nor the law support such a reopening at this time), all parties must be provided an opportunity to object to such a request, present their own evidence on the land donation proposal, cross-examine witnesses of other parties and Staff and comment on all duly presented evidence, in accordance with Section 10-101 of the Act. 220 ILCS 5/10-101. Following the close of such rehearing, a proposed order must be issued and the parties have the right to file exceptions to such proposed order. 220 ILCS 5/10-111.

We will not, and indeed, as a matter of law, cannot engage in any evaluation of the substantive proposals contained in ComEd's letter at this time. The General Assembly has enacted the laws cited above to protect the interests of all parties, including the Commission, in

regulatory proceedings. The *ex parte* restrictions contained in the Act serve not only to protect the due process concerns of interested parties, but also to ensure that legal and evidentiary bases for the Commission's final decision exist in the event of legal challenges before a reviewing court.<sup>1</sup>

For all the reasons explained above, we object to the Commission's consideration of the proposal contained in Commonwealth Edison's November 29<sup>th</sup> letter in its forthcoming deliberations on Docket No. 00-0361. We also urge the Commission to disregard any extra-record proposals in this case without following the appropriate procedural requirements as set forth in the Public Utilities Act and in its own rules of practice.

Sincerely,

A handwritten signature in cursive script, reading "Janice A. Dale".

Janice A. Dale, Chief  
Public Utilities Bureau

cc: Attached Service List

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<sup>1</sup> In accordance with the Illinois Public Utilities Act and the Illinois Commerce Commission's rules of practice, this letter is being filed with the Chief Clerk's Office and served upon all parties of record.

**SERVICE LIST**  
**ICC DOCKET NO. 00-0361**

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